

UNITED STATE OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

FLEETGUARD, INC.

Employer <sup>1/</sup>

and

Case 9-RC-17690

UNITED FOOD AND COMMERCIAL WORKERS  
INTERNATIONAL UNION, LOCAL 1099, AFL-CIO-CLC

Petitioner <sup>2/</sup>

**REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

The Employer, Fleetguard, Inc., operates a warehouse and distribution facility located in Hebron, Kentucky, where it employs approximately 49 employees. The Petitioner, United Food and Commercial Workers International Union, Local 1099, AFL-CIO-CLC, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time distribution employees employed by the Employer at its Hebron, Kentucky facility, excluding all lead employees, temporary employees, office clerical employees, guards and supervisors as defined in the Act.

At the hearing and in their briefs, the parties disagree on the following issues: (1) whether seven lead employees are statutory supervisors who should be excluded from the unit; and (2) whether the three shipping clerks should be excluded from the unit as office clerical employees. The Petitioner, contrary to the Employer, contends that the lead employees must be excluded from any unit because they are statutory supervisors, and that the shipping clerks should be excluded from the unit on the grounds that they are office clerical employees. The unit sought by the Petitioner has approximately 32 employees, while the unit the Employer contends is appropriate would include approximately 42 employees.

I have considered the evidence and the arguments presented by the parties on each of the issues. I have concluded, as discussed below, that the Petitioner has not met its burden of establishing that the lead employees are statutory supervisors. In addition, I find that the shipping clerks are not office clerical employees and that they share a sufficient community of interest with the other unit employees, that warrant their

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<sup>1/</sup> The Employer's name appears as amended at hearing.

<sup>2/</sup> The Petitioner's name appears as amended at hearing.

inclusion in the unit. Accordingly, I have directed an election in a unit of approximately 42 employees, including the lead employees and shipping clerks.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. I will then present, in detail, the facts and reasoning that supports each of my conclusions on the issues.

## **I. OVERVIEW OF OPERATIONS**

The Employer is a manufacturer and distributor of exhaust components and filtration devices for tractor trailers, boats and lawn equipment. The Employer's facility involved in this proceeding is known as the Kentucky Distribution Center. From the distribution center, the Employer warehouses and distributes filtration and exhaust components to its customers within and outside the United States.

The Employer's distribution center has the following operations: picking, iTEC/freightliner, inventory, restock, intra-company, receiving, outbound, quality assurance and maintenance. Melissa Schmidt, the Employer's operations manager, is responsible for the overall operations of the Employer's Kentucky distribution center. Reporting to Schmidt are three admitted supervisors who are in charge of various operations: Paul Stanton, supervisor of picking and maintenance; Jace Turnbull, supervisor of inventory and restock; and Bill Stanton, supervisor of receiving/outbound, and quality assurance (QA).

### **The Shipping Office and Picking Area**

Lisa Lucas is a shipping clerk and the lead employee in picking. Excluding Lucas, it appears from the record that there are approximately 17 employees employed in the picking area, including two shipping clerks. Another shipping clerk works with a picker in the iTEC/freightliner and intra-company areas.

Customer orders for a particular product are received by a computer in the Employer's shipping office. From these orders, the shipping clerks, among other things, prepare a "pick ticket" which identifies the customer, the type of product ordered, and the size of the order. It appears from the record that the shipping clerks either give the "pick tickets" directly to the pickers or place them in a "mail box" located in the shipping office for the pickers to retrieve.

In addition to preparing the "pick tickets," Lucas and the other shipping clerks are responsible for verifying orders in the computer systems, looking up back orders, researching missing orders, finding product on shelves, and discussing customer questions or issues with the Employer's customer service department. During a typical workday, Lucas frequently interacts with pickers, processing restockers, shipping employees in the outbound area and other unit employees. Approximately once a week, Lucas assists other employees in the Fed Ex area with packing and scanning product.

It appears from the record that the picking area is where most of the product is kept. After receiving an order, the pickers locate the product. If it is a large order, the product is placed on a skid or pallet and taken to outbound shipping for delivery to the customer by private carrier. If the order is small, the product is taken to the Fed Ex/UPS shipping area for delivery to the customer.

### **ITEC/Freightliner Areas**

Eric Buckler is the lead employee in the iTEC/freightliner area. Excluding Buckler, it appears that two other employees work in this area. At the beginning of the workday, the shipping clerks bring the “pick tickets” to Buckler’s work area and give them to a picker or place them in a bin located on the wall. The pickers, including Buckler, remove the “pick tickets” from the bin on a first-in, first-out basis. Buckler spends almost all of his workday alongside other pickers retrieving and loading product. He uses the same equipment as other unit employees, e.g., forklifts, a double reach truck, and a cherry picker. Finally, Buckler verifies that an order has been completed by entering the verification information in a computer.

### **Restock Area**

Paul Elrod is the lead employee in the restock area. It appears from the record that, including Elrod, there are five or six employees who work in this area. Restockers are responsible for taking product located in an “alternate” location within the distribution center and placing it in a “primary” location where the picker would retrieve the product.

### **Intra-Company Area**

Jerry Rhymer is the lead employee in the intra-company area. He works with two or three other employees in this area.

The intra-company area is responsible for picking and shipping product for the Employer’s other distribution warehouses. Product going out from intra-company does not go to outside customers, but instead goes to the Employer’s own warehouses.

### **Receiving and Outbound Area**

Mitch Moore is the lead employee in the receiving/outbound area. There are a total of seven employees who work in this area, excluding Moore, one in outbound and six in receiving. Receiving area employees receive incoming product from the Employer’s manufacturing centers, unload it from trailers, place it in the lane where it will be restocked, or place it in a shipping lane. Outbound area employees take the staged freight, wrap it, and load it on the trailers along with the accompanying paperwork for shipment.

### **Quality Assurance Area**

Ronnie Taylor is the lead employee in quality assurance (QA). It appears from the record that no other employees are assigned to the QA area. The QA area is responsible for reporting whether incoming product is damaged or if any product is damaged while in the warehouse/distribution center. QA also repairs damaged product, sends it to be re-boxed, and relabels incorrectly labeled product. Finally, QA holds back product with manufacturing defects.

It appears from the record that Taylor is a lead employee because he has the ability and experience to do more tasks than other unit employees and he has been cross-trained to perform more jobs.

### **Maintenance Area**

The Employer employs two employees in the maintenance department. The employees in the maintenance department are responsible for maintenance of the building and equipment. For instance, they repair building floors, the racks where product is held, conveyor belts, forklifts and any type of equipment the Employer uses.<sup>3/</sup>

## **II. SUPERVISORY STATUS OF LEAD EMPLOYEES**

### **A. Overview of Lead Employee Position**

All employees, including the lead employees, share the same working conditions and fringe benefits. Lead positions are filled by posting them for bid by unit employees. Lead employees, unlike the agreed-upon supervisors, do not have their own offices or secretarial support.

Like the other unit employees, lead employees punch a time clock, are paid on an hourly basis and receive overtime. However, lead employees receive an additional hourly amount. The amount that they receive varies depending upon their length of service and scope of responsibilities as lead employees.

The lead employees are subject to the same working conditions as other unit employees, have frequent contact with unit employees, and perform the same duties as unit employees. For example, they use the same restroom, breakroom facilities and same entrance and exit to the warehouse distribution center as the other unit employees. They are governed by the same handbook as other unit employees. Unlike admitted supervisors who have to wear a shirt with the Employer's logo, lead employees are allowed to wear street clothes like the other unit employees. Finally, the

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<sup>3/</sup> During the hearing, the parties stipulated, and the record shows, that the maintenance employees share a community of interest with other unit employees and should be included in any unit I find appropriate. In accordance with the stipulation of the parties and based upon the record, I have included the maintenance employees in the unit.

lead employees, interact daily with other unit employees and they spend almost all of their time performing the same tasks as other unit employees.

## **B. ANALYSIS AND RESOLUTION OF SUPERVISORY ISSUES**

Before examining the specific duties and authority of the lead employees, I will review the requirements for establishing supervisory status. Section 2(11) of the Act defines the term supervisor as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet the definition of supervisor in Section 2(11) of the Act, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6<sup>th</sup> Cir. 1949), cert. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000).

The burden of proving supervisory status lies with the party asserting that such status exists. *Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-712 (2001); *Michigan Masonic Home*, 332 NLRB No. 150, slip op. at 1 (2000). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., *Vencor Hospital – Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997). Lack of evidence is construed against the party asserting supervisory status. *Michigan Masonic Home*, supra, slip op. at 1. Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory status. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

Possession of authority consistent with any of the indicia of Section 2(11) is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g., *Pepsi-Cola Co.*, 327 NLRB 1062, 1063 (1999); *Fred Meyer Alaska*, 334 NLRB No. 34, slip op. at 4 n. 8 (2001). The absence of evidence that such authority has been exercised may, however, be probative of whether such authority exists. See, *Michigan Masonic Home*, supra, slip op. at 3; *Chevron U.S.A.*, 308 NLRB 59, 61 (1992).

With regard to whether the lead employees possess any of the 12 indicia of supervisory status listed in Section 2(11) of the Act, it is noted that there is no contention or record evidence that lead employees hire, discharge, suspend, lay off, recall, promote, or effectively recommend such actions. Accordingly, I will address only

the Petitioner's arguments that the lead employees are supervisors because of their role in assigning employees, transferring employees, responsibly directing employees, disciplining employees, effectively recommending the rewarding of employees, and effectively recommending and adjusting grievances. In addition, I will address the role of lead employees in evaluating employees, and the ratio of supervision to employees if I were to find that lead employees were statutory supervisors.

In considering whether the lead employees possess any of the supervisory authority set forth in Section 2(11) of the Act, I note that in enacting this section of the Act, Congress emphasized its intention that only supervisory personnel vested with "genuine management prerogatives" should be considered supervisors, and not "straw bosses, leadmen, set-up men and other minor supervisory employees." *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985). I conclude, for the reasons discussed below, that the seven lead employees in issue here are not statutory supervisors but rather the type of individuals that Congress did not wish to exclude from coverage by the Act.

### **1. Assignment of Work**

Petitioner, in its brief, asserts that lead employees exercise independent judgment when assigning work to warehouse employees. However, the record does not support this assertion. The record discloses that assignment of work by the lead employee is merely routine and does not require the use of independent judgment. For example, lead employee Eric Buckler is lead over iTEC/freightliner area where he works with two other unit employees. The record reveals that work assignments there are routine, as the pickers take the orders from the bin on a "first in, first out" basis.

Likewise, the record does not support the assertion that lead employee Jerry Rhymer exercises independent judgment to assign work to employees in the intra-company area. As in the iTEC/freightline area, the lead employee in the intra-company area, distributes pick tickets in the same "first in, first out" manner.

Lisa Lucas, lead employee in picking area, assigns work in a similarly routine manner. Thus, the record shows that employees come to the shipping office located in the middle of the warehouse. Lucas gives each employee a 60-line computer printout. Each line represents a different product to be found and routed by the picker. Each picker works a different area, routing product to a specific customer such as special case, or via a certain type of shipping company such as FedEx. The pickers know to work in their usual area, and do not need significant direction.

There is no record evidence that the other lead employees have any independent authority to assign work. In *Quadrex Environmental Company*, 308 NLRB 101 (1992), the Board found that lead persons who assigned work, like the lead employees here, according to a predetermined plan were not supervisors. Rather, such assignments were found to constitute routine communication of information.

In its brief, the Petitioner specifically asserts that lead employee Lucas uses independent judgment to decide which employee to put in an area when the employee who usually works in that area is absent. This assertion, however, is not supported by record testimony. Thus, Lucas testified that in an employee's absence she would simply put the employee who had training in the area over one who did not. Such assignments appear to be merely routine not requiring independent judgment. Similarly, lead employee Rhymer, contrary to the Petitioner's position, did not use independent judgment when he decided to complete an order himself, which had to be done "ASAP," rather than assigning it to other employees. The mere fact that Rhymer decided to do the assignment himself does not, without more, mean that he exercises independent judgment in assigning work to employees.

## **2. Transfer of Employees**

The Petitioner contends that the leads can temporarily transfer unit employees to other areas, after they complete their assigned tasks. The record, however, shows that all unit employees know that when their assigned work is completed they are to assist in other areas. Thus, the operations manager testified that if one area had work left near the end of the workday, the lead employee in that area would not consult with another lead employee as to who to assign to help out. Instead, there would be a discussion between stipulated supervisors as to whether employees in one area should be assigned to another area to help out. Moreover, the lead employees do not select which employee to transfer to the other area. The employee is selected for transfer after the admitted supervisor consults with the lead person to see which employees have finished their work and cleaned their areas and are available. The role of the lead employee in this process is limited to suggesting to the supervisor who they should assign and by giving them information as to availability of employees. In a similar circumstance, in *J.C. Brock Corp.*, 314 NLRB 157 (1994), the Board found a coordinator's role in directing employees to a different area did not involve independent judgment where the process was routine and employees knew from experience where they would be expected to report.

## **3. Responsibly Directing Employees**

In its brief, the Petitioner contends that lead employees direct the work of employees "outside of the Employer's evaluation process." In support of its position, the Petitioner cites testimony that an unnamed lead employee told a current lead employee, Jerry Rhymer, when Rhymer was still a regular unit employee, that he (Rhymer) should slow down when he worked to avoid making mistakes. When asked whether he ever did anything similar as a lead, Rhymer testified that he tells an employee who has trouble with accuracy that he might want to slow down. Rhymer describes it as, "it's like, you know I might help you out, give some constructive criticism." In the opinion of the undersigned this example proffered by the Petitioner shows that such statements as described by Rhymer amount only to constructive criticism and do not establish that lead employees responsibly direct the work of other employees.

Although the lead employees to some extent, may direct employees' work and have very limited authority to move employees between workstations, it appears that the direction and assignment of work is routine in nature, not requiring the exercise of independent judgment. Such routine direction and assignment of employee is not indicative of true supervisory authority. See, e.g., *Sears, Roebuck & Co.*, 292 NLRB 753, 754-755 (1989).

#### **4. Discipline of Employees**

The record does not support the Petitioner's contention that lead employees effectively recommend the discipline of other employees. To the contrary, the testimony of the lead employees, as well as that of the operations manager, is consistent in establishing that lead employees have no authority to discharge, suspend, write-up or otherwise discipline any employee or effectively recommend the same. The lead employees are expected to, and do, report employee misconduct to supervisors. However, the examples of discipline found in the record, as well as the examples cited by the Petitioner in its brief, show that, in each case, the lead employees did not make the decision to discipline the employee, recommend the discipline of the employee, or recommend the level of discipline to give to the employee. In each case, the supervisor conducted his own investigation of the matter or, at least, tried to verify the version of events reported to him by the lead employee. In similar circumstances, the Board found that employees who report incidents of unacceptable work performance or behavior are not supervisors, but are simply engaging in a non-supervisory reporting function. *Nymed, Inc., d/b/a Ten Broeck Commons*, 320 NLRB 806, at 812 (1996).

As Petitioner points out in its brief, lead employees may sit in on meetings in which discipline is issued to employees by a supervisor. However, in each situation, the lead employee was present merely as a witness. The supervisor had already decided on the discipline. Only the supervisor signs the disciplinary form which is given to the employee, and usually the lead employee is not called upon for any comments or suggestions.

The Petitioner cites an incident when lead employee Lucas advised an employee not to use a certain machine and he used it anyway. According to Lucas, the employee after using the machine, told Supervisor Paul Stanton and lead employee Julius Hall that Lucas had told him he could use the machine. When Stanton asked the employee about the incident, the employee "got smart" with him. Subsequently, Stanton discharged the employee. Contrary to the Petitioner's apparent assertion that this shows the role of a lead person in issuing discipline, it appears to show the opposite. The lead person neither recommended the discipline nor issued it. Rather, the supervisor attempted to investigate the incident and discharged the employee after the employee "got smart" with him.



## **5. Rewarding of Employees and Adjustment of Grievances**

The record shows that about 3 months ago lead employees were asked to attend a special meeting with the operations manager and the supervisors. The purpose of the meeting was to set up employee committees including an employee events committee, a performance appraisal committee, a compensation committee, and a safety committee. It was agreed at the meeting that one lead employee and one supervisor would be on each committee and that neutral employees would be invited to participate on the various committees. According to the operations manager, the performance appraisal committee, after creating a new performance appraisal form, no longer exists. Likewise, the compensation committee is no longer in existence. The safety committee still exists. Although the employee events committee met once regarding a company event, it has not met since.

In its brief, the Petitioner asserts that because lead employees participate in the employee committees, they effectively recommend how employees are rewarded and how their grievances are adjusted. However, the record is silent on what transpired at the committee meetings or what role the lead employees played on the committees. In any event, the lead employees' participation on such committees, which also have unit employees as members, does not establish that the lead employees effectively recommend the rewarding of employees or the adjustment of grievances.

Lead employees provide some input into employee evaluations. However, the authority to participate in evaluating employees is not alone determinative of supervisory status. Unless the evaluations can be linked directly to wage increases, rewards, promotions, retention, or in some other way affect the employee's employment status, such authority will not confer supervisory status. It is only when evaluations are the medium by which personnel actions are effectively recommended that they become a factor pointing to supervisory status. *Beverly Manor Convalescent Centers*, 275 NLRB 943, at 946 (1985).

Operations Manager Schmidt testified that annual employee raises are different for each employee as they are based on length of service and performance issues as reflected in their evaluations. As it is apparent that evaluations may impact an employee's raise, I must examine the role lead employees play in the evaluation process.

The evaluation process begins with the unit employee and the lead employee each filling out an appraisal form on the employee, the lead employee and unit employee evaluate the employee on a numerical rating system consisting of various employee attributes. The lead employee then meets with the supervisor to discuss the evaluation. However, the final decision on the employee ratings is made during a meeting between the supervisor and the operations manager. The lead employee does not participate in this meeting. The final evaluation given to the employee is signed only by the supervisor. There is no evidence the lead employee effectively recommends the final ratings received by the employee. The supervisor considers the lead employees'

input, just as he considers the unit employee's own input as to how he should be rated. In short, the lead employee merely reports information considered in preparing the evaluation. The mere reporting of information by the lead employee is not sufficient to confer supervisory status. See, *Highland Superstores, Inc. v. NLRB*, 927 F.2d 918, at 922 (6<sup>th</sup> Cir. 1991).

### **C. CONCLUSION AS TO STATUS OF LEAD EMPLOYEES**

Based on the foregoing, the record as a whole and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the Petitioner has failed to meet its burden of proving that the lead employees are statutory supervisors. Rather, the lead employees are, at best, merely "straw bosses" who do not exercise any independent judgment with respect to Section 2(11) indicia. See, e.g., *Somerset Welding & Steel Co., Inc.*, 291 NLRB 913, 914 (1988); *Dura-Vent Corporation*, 257 NLRB 430, 431-432 (1981). Although not a primary indicia of supervisory status, I note that if I were to find the lead employees to be supervisors, there would be a ratio of one supervisor for every three unit employees, a rather high ratio and a factor which further militates against the lead employees being supervisors. Finally, the record shows that the lead employees have frequent contact with other unit employees, perform the same tasks as the other employees, and share the same pay structure, benefits and working conditions with other employees. Accordingly, I conclude that the lead employees are not supervisors and I have included them in the unit.

## **III. UNIT PLACEMENT OF SHIPPING CLERKS**

### **A. AN OVERVIEW**

The Petitioner contends, contrary to the Employer, that the three shipping clerks should be excluded from the unit on the grounds that they are office clerical employees. The shipping clerks are involved in the overall distribution center work relating to the receiving, storing, and picking products for customers. For example, the shipping clerks print, sort and distribute the order tickets, prepare the appropriate paper work relating to the orders, and audit and verify orders. They have extensive use of the computers in the shipping clerk office which is located in the middle of the distribution center. Other unit employees, including lead employees, have access to these same computers. The shipping clerks in performing their job duties must interact with other unit employees including pickers, restockers, and receiving and shipping employees. On occasion, perhaps once or twice a week, the shipping clerks perform the same work as other unit employees when the work load for a given day is extremely busy. The shipping clerks share the same working conditions, pay structure and fringe benefits as the other unit employees. They are paid on an hourly basis and are entitled to overtime pay.

The shipping clerks use the same entrance to enter and exit the facility as the other unit employees. They use the same breakroom and restroom facilities. They are

supervised by one of the three warehouse supervisors who supervise the other hourly unit employees.

In contrast to their regular and frequent contact with unit employees, the shipping clerks do not have any work-related contact with the two stipulated office clerical employees. Indeed, the office clerical employees do not work on the warehouse distribution center floor. Rather, the office clerical employees work in the front office which is separate from the distribution warehouse where the shipping clerks and other unit employees work. The office clerical employees perform work for management, including reception desk duties, secretarial duties and entering management reports into their computers.

#### **B. APPLICABLE PRINCIPLES AND CONCLUSIONS RELATING TO THE SHIPPING CLERKS**

Based on the record testimony, it is clear that the shipping clerks fall into the category of warehouse or plant clerical employees. Such employees are consistently found to have a sufficient community of interest with other warehouse employees to mandate their inclusion in the same bargaining unit. Indeed, their duties are integral to the overall functioning of the warehouse operation. *Fleming Foods, Inc.*, 313 NLRB 948 at 949 (1994). See also, *John N. Hansen Co.*, 293 NLRB 63, at 64-65 (1989).

Here, the record indicates that the shipping clerks have a strong community of interest with the other unit employees. They share the same working conditions, pay structure and benefits. They use the same facilities and work in the same area. There is no evidence in the record that the shipping clerks have any work-related interchange or interaction with the office clerical employees. Indeed, the office clerical employees work in a separate area along side management and supervisors. The shipping clerks work in the same area as the other unit employees and perform work related to that of the other unit employees. In *Hamilton Halter Company*, 270 NLRB 331 (1984), the Board found that an employee who performed duties similar to those of shipping clerks here shared a sufficient community of interest with the production employees to require his inclusion in the unit as a plant clerical. In *Jumbo Produce*, 294 NLRB 998, at 1009, the Board found two employees, similar to the shipping clerks here, who worked in a warehouse office and were part of the order flow process to be plant clericals and included them in the warehouse unit.

Based on the foregoing and the entire record, I conclude that the three shipping employees share a sufficient community of interest with other employees to require their inclusion in the unit. I will, therefore, include them in the unit.

#### **IV. EXCLUSIONS FROM THE UNIT**

The parties agree, the record shows, and I find that the following persons are supervisors within the meaning of the Act: Melissa Schmidt, operations manager;

Paul Stanton, supervisor of picking and maintenance areas; Jace Turnbull, supervisor of inventory and restock areas; Bill Stanton, supervisor of receiving and outbound areas; and Rena Gibbs, human resources manager. Accordingly, I will exclude them from the unit.

The parties agree, the record shows, and I find that temporary employees do not share a community of interest with other unit employees. Therefore, I will exclude them from the unit.

## V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**All full-time and regular part-time distribution employees, including maintenance employees, lead employees, and shipping clerks employed by the Employer at its Hebron, Kentucky facility, but excluding all temporary employees, office clerical employees, guards and supervisors as defined in the Act.**

## VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Food and Commercial Workers International Union, Local 1099, AFL-CIO-CLC. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

## **A. VOTING ELIGIBILITY**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

## **B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **September 24, 2002**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (513) 684-3946. Since the list will be made available to all parties to the election, please furnish **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. NOTICE OF POSTING OBLIGATIONS**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **VII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **October 1, 2002**. The request may **not** be filed by facsimile.

Dated at Cincinnati, Ohio this 17<sup>th</sup> day of September 2002.

Richard L. Ahearn, Regional Director  
Region 9, National Labor Relations Board  
3003 John Weld Peck Federal Building  
550 Main Street  
Cincinnati, Ohio 45202-3271

### **Classification Index**

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